

February 18, 1997

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE REGULATIONS
IMPLEMENTING THE FEDERAL AND STATE LOW INCOME HOUSING TAX CREDIT
LAWS

CALIFORNIA CODE OF REGULATIONS,
TITLE 4, CHAPTER 17

Section 10300. Purpose and Scope

- (a) These regulations establish procedures for the reservation, allocation and compliance monitoring of the federal and state low-income housing tax credit and establish policies and procedures for use of the Credit to meet the purposes contained in Section 252 of Public Law No. 99-514 (October 22, 1986), known as the federal Tax Reform Act of 1986, as amended, and Chapter 658, California Statutes of 1987, as amended, and Chapter 1138, California Statutes of 1987, as amended.
- (b) Internal Revenue Code Section 42 provides for state administration of the federal low-income housing tax credit program. California Health and Safety Code Sections 50199.4 through 50199.22, and California Revenue and Taxation Code Sections 12205.5, 12206, 17057.5, 17058, 23610.4 and 23610.5 establish the California state low-income housing tax credit program and designate the California Tax Credit Allocation Committee as the housing credit agency to administer both the federal and state tax credit programs in California. These regulations set forth the policies and procedures governing the Committee's management of the Credit programs. In addition to these regulations, program participants shall comply with the rules applicable to Credit programs as set forth in IRC Section 42, and other applicable sections of the IRC. In the event that Congress, the California Legislature, or the IRS add or change any statutory or regulatory requirements concerning the use or management of the Credit, program participants shall comply with such requirements.

Section 10302. Definitions

- (a) Allocation. The certification by the Committee of the amount of federal, or federal and state, Credit awarded to the applicant for purposes of income tax reporting to the IRS and/or the FTB.
- (b) Applicable Credit Percentage. The monthly rate, published in IRS revenue rulings pursuant to IRC Section 42(b)(2)(A), applicable to the federal Credit program for purposes of calculating annual Credit.
- (c) Average income target. The sum of the proposed tenant income restrictions for each low-income unit in the proposed project depicted as a percentage of the area median income by unit size, divided by the total number of low-income units in the proposed project.
- (d) Chairperson. The Chairperson of the California Tax Credit Allocation Committee.
- (e) Committee. The California Tax Credit Allocation Committee or its successor.
- (f) Compliance period. That period defined by IRC Section 42(i)(1) and modified by Rev. & Tax Code Section 12206(h), and further modified by the provisions of these regulations.

- (g) Credit. Low-Income Housing Tax Credit.
- (h) Developer fee. Amount of identified uses of project funds paid as compensation for developing the proposed project to include, all Credit consultant fees, broker fees, processing agent fees, developer overhead and profit, compensation for any construction management oversight provided by the developer, the cost of any personal guarantees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.
- (i) Executive Director. The executive director of the California Tax Credit Allocation Committee.
- (j) Federal housing credit ceiling. The amount specified in Title 26, IRC Section 42(h)(3)(C).
- (k) Federally subsidized. As defined by IRC Section 42(i)(2).
- (l) Federal Credit. The tax credit for low-income rental housing provided under IRC Section 42 and implemented in California by the Committee.
- (m) Financial feasibility. As required by Title 26, IRC Section 42(m)(2)(A), and further defined by these regulations in Section 10327.
- (n) FTB. State of California Franchise Tax Board.
- (o) IRS. United States Internal Revenue Service.
- (p) Local Reviewing Agency. An agency, so designated by the local government having jurisdiction, that will perform evaluations of proposed projects in its locale according to criteria set forth by the Committee.
- (q) Low-income unit. As defined by IRC Section 42(i)(3).
- (r) Market-rate unit. A unit other than a low-income unit as defined by these regulations.
- (s) Project. As defined by IRC Section 42(g)(1), one or more buildings that contain rental units of similar construction and are located on the same tract of land, financed under a common plan, and owned by the same person for federal tax purposes. Buildings that are part of a scattered-site project may be treated as part of a single project if they meet these requirements, and if all of the dwelling units in the buildings are rent-restricted residential rental units.
- (t) QAP. The “Low Income Housing Tax Credit Programs Qualified Allocation Plan”, adopted by the Committee on February 18, 1997 in accordance with the standards and procedures of IRC Section 42(m).
- (u) Qualified nonprofit organization. An organization which has been designated as a tax-exempt organization under IRC Section 501(c)(3) or 501(c)(4), and whose exempt purposes include the development of low-income housing as described in IRC Section 42, and, if a state Credit is requested also qualifies under H & S Code Section 50091.
- (v) RHS. United States Rural Housing Service, formerly Rural Housing and Community Development Service or RHCDS, formerly Farmers Home Administration or FmHA.

- (w) Rent-restricted units. Units meeting the requirements of IRC Section 42(g)(2).
- (x) Reservation. As provided for in H & S Code Section 50199.10(e)(2), the initial award of Credit to an eligible project. Reservations may be preliminary or final. Reservations may be conditional.
- (y) Rural. An area defined in H & S Code Section 50199.21.
- (z) State housing credit ceiling. The aggregate state housing credit dollar amount available for annual allocation by the Committee under Rev. & Tax Code, Sections 12206(g), 17058(g), and 23610.5(g).
- (aa) State Credit. The tax credit for low-income rental housing provided by Rev. & Tax Code, Sections 12206, 17058, and 23610.5.
- (bb) Tax credit factor. The quotient of the estimated or actual equity amount raised from a Credit syndication or other instrument (not including syndication-related expenses) divided by the total amount of federal and state Credit reserved or allocated to a project. The calculation is to include the full ten-year amount of federal Credit and the total of state Credit.
- (cc) Tax-exempt bond project. A project that meets the definition provided in IRC Section 42(h)(4).
- (dd) Tax forms. Income tax forms for claiming Credit: for federal Credit, IRS Form 8609; and, for state Credit, FTB Form 3521A.
- (ee) Threshold Basis Limit. The aggregate limit for all proposed project units on amounts of unadjusted eligible basis allowed by the Committee for purposes of calculating Credit, published by the Committee in its Application Supplement by unit size and project location, based upon mortgage limits published by the U. S. Department of Housing and Urban Development for the 221(d)(3) Nonprofit program.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10305. General Provisions

- (a) Meetings. The Committee shall meet on the call of the Chairperson.
- (b) Report. At each meeting of the Committee at which Credit reservations from the housing credit ceiling are made, the Executive Director shall make a report to the Committee on the status of the federal and state Credit reserved and allocated.
- (c) Forms. The Executive Director shall develop such forms as are necessary to administer the programs and is authorized to request such additional information from applicants as is appropriate to further the purposes of the programs. Failure to provide such additional information may cause an application to be deemed incomplete or a reservation null and void.

- (d) **Limitations.** No applicant shall be eligible to receive a Credit if, together with the amount of federal or state Credit being requested, the applicant would have, in the capacity of individual owner, corporate shareholder, general partner, sponsor, developer or housing consultant, received a reservation or allocation equal to or greater than twenty percent (20%) of either the federal or state Credit ceiling for any calendar year.
- (e) **Notification.** The Committee shall notify the Chief Executive Officer (e.g., city manager, county administrative officer) of the local jurisdiction within which the proposed project is located and provide such individual an opportunity to comment on the proposed project (IRC Section 42(m)(1)(ii)).
- (f) **Conflicting provisions.** These regulations shall take precedence with respect to any and all conflicts with provisions of the QAP or other guidance provided by the Committee. This subsection shall not be construed to limit the effect of the QAP and other guidance in cases where said documents seek to fulfill, without conflict, the requirements of federal and state statutes pertaining to the Credit programs.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10310. Reservations of Tax Credit

- (a) **Reservation cycles.** The Committee shall allocate Credit on a regular basis in accordance with H & S Code Section 50199.14(a), pursuant to these regulations and the QAP, incorporated by reference in full.
- (b) **Credit amounts available.** The amount of Credit available in each reservation cycle shall be established by the Committee at a public meeting designated for that purpose, in accordance with the following provisions:
 - (1) **Amount of federal Credit.** The amount of federal Credit available for reservation in a reservation cycle shall be equal to the sum of:
 - (A) \$1.25 multiplied by the State population plus the unused, or deficit, federal credit ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
 - (B) the amount allocated, and available, under IRC Section 42(h)(3)(D) as of the date that is thirty days following the application deadline for said cycle;
 - (C) the amount of federal credit ceiling returned, and available, as of the date that is thirty days following the application deadline for said cycle; and,
 - (D) additional amounts of federal credit ceiling, from the current or subsequent year, necessary to fully fund the next ranked application in said cycle, when Credit amounts available, as established under this Section, will only partially fund said application.
 - (2) **Amount of state credit.** The amount of state Credit available for reservation in a reservation cycle shall be equal to the sum of:
 - (A) \$35 million plus the unused, or deficit, state credit ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;

- (B) the amount of state credit ceiling returned by the date that is thirty days following the application deadline for said cycle; plus,
 - (C) additional amounts of state credit ceiling, from the current or subsequent year, necessary to fully fund the next ranked application in said cycle, when Credit amounts available, as established under this Section, will only partially fund said application.
- (3) Waiting list Credit. Credit returned and Credit allocated under IRC Section 42(h)(3)(D) during any calendar year, and not made available in a reservation cycle, shall be made available to applications on Committee waiting lists, pursuant to subsection 10325(h).
- (c) Subsequent year's ceiling. The Committee in its discretion may make reservations of Credit against a subsequent year's federal and state credit ceilings.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10315. Setasides, Apportionments, and Credit Competitions

- (a) Nonprofit set-aside. Ten percent (10%) of the federal credit ceiling for any calendar year shall be set-aside for certain projects involving qualified non-profit organizations, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).
 - (1) Additional qualifications. For purposes of this subsection, the qualified nonprofit organization must:
 - (A) consist of only qualified nonprofit organizations, including all general partners of a limited partnership, and all joint venture entities;
 - (B) have an ownership interest in the project (directly or through a partnership) throughout the compliance period;
 - (C) materially participate in the development and operation of the project throughout the compliance period; and,
 - (D) not be affiliated with or controlled by a for-profit organization.
 - (2) Homeless assistance apportionment. In each reservation cycle, fifty percent (50%) of the Nonprofit set-aside shall be made available to projects assisted, under U.S. Code Title 42 Chapter 119 Subchapter IV Part E -- Miscellaneous Provisions, Assistance for Single Room Occupancy Dwellings and U.S. Code Title 42 Chapter 119 Subchapter IV Part F--Shelter Plus Care Program and U.S. Code Title 42 Chapter 131--Housing Opportunities for Persons With AIDS. If rental assistance is the type of assistance provided by the above named programs, the rental assistance must be project-based and the remaining term of the project-based assistance contract shall be no less than five (5) years and shall apply to no less than thirty percent (30%) of the units in the proposed project. Any amount of Credit apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Nonprofit set-aside.
- (b) Rural set-aside. Twenty percent (20%) of the federal credit ceiling for any calendar year shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21.

- (1) RHS Section 515 program apportionment. In each reservation cycle, fourteen percent (14%) of the rural set-aside shall be available to projects financed by the RHS Section 515 Program. Any amount of Credit apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Rural set-aside.
- (2) Any amount of Credit set aside under this subsection remaining after the reservation of Credit in the final cycle of any calendar year shall be available for allocation to any eligible project.
- (c) Small development set-aside. Two percent (2%) of the federal credit ceiling for any calendar year shall be set aside for projects of twenty (20) or less units. Any amount of Credit set aside under this Section remaining after the reservation of Credit in the final cycle of any calendar year shall be available for allocation to any eligible project.
- (d) Housing type apportionments. Apportionments of the federal credit ceiling shall be determined following consideration of the preferences established under H & S Code Section 50199.14(c)(3), and shall be in the following amounts:

<u>Housing Type</u>	<u>Apportionment</u>
Large Family	60%
Single Room Occupancy	10%
"At Risk"	10%
Special Needs	5%
Seniors	15%
Non-Targeted	0%

To be considered eligible for Credit apportioned under this subsection, applications shall meet the "additional threshold requirements" of Section 10325(g).

- (e) Geographic apportionments. Apportionments of the federal credit ceiling shall be made in approximately the following amounts to geographic regions of the state, based upon the proportion of California renter occupied households within a county, a combination of counties, or portions of a county or counties, that pay thirty-five percent (35%) or more of income for rent (i.e., "rent burdened households"), as determined by the most current U.S. Census, subject to the following:
 - (1) Generally, rent burdened households in areas eligible for the Rural set-aside shall not be considered when establishing Geographic apportionments;
 - (2) Credit requests of applications selected under the Rural set-aside, including the RHS Section 515 apportionment, shall not reduce the available balance in the Geographic apportionment pertaining to said applications, as implemented by subsection 10325(d);
 - (3) The geographic apportionment of Credit available to applications selected under the Rural set-aside, including the RHS Section 515 apportionment, shall be considered unlimited for purposes of implementing subsection 10325(d);
 - (4) Once amounts of federal Credit reserved to a geographic area has exceeded 85% of its corresponding Geographic apportionment, as listed below, the balance remaining in said apportionment shall be considered zero.

<u>Geographic Area</u>	<u>Apportionment</u>
Los Angeles County	39.7%
San Diego County	10.3%
Orange County	8.0%
Alameda County	5.3%
San Francisco County	4.6%
Santa Clara County	4.4%
Sacramento County	4.2%
San Bernardino County	3.9%
Contra Costa County	2.2%
San Mateo County	2.0%
Riverside County	2.0%
All Other Counties	13.2%

- (f) Competition allotments. Allotments of fifty percent (50%) of the federal credit ceiling shall be established for each of two distinct application competitions, “Affordability” and “Credit Utilization.” Selection criteria for the two competitions is described fully in Section 10325.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10317. State Tax Credit Eligibility Requirements

- (a) General. In accordance with Rev. & Tax Code Sections 12205.5, 12206, 17057.5, 17058, 23610.4 and 23610.5, there shall be allowed as a credit against the “tax” (as defined by Rev. & Tax Code Section 12201) a state Credit in an amount equal to the amount determined in Rev. & Tax Code Section 12206(c), computed in accordance with IRC Section 42, except as otherwise provided in applicable sections of the Rev. & Tax Code.
- (b) Allocation of federal Credit required. State Credit recipients shall have first been awarded federal Credit, or shall qualify for Credit under Section 42(h)(4)(b), as required under H & S Code Section 50199.14(e) and Rev. & Tax Code Section 12206(b)(1)(A).
- (c) Limit on Credit amount. The combined amount of federal Credit and state Credit allocated to a building shall be limited to the lesser of the amount of state Credit pursuant to Rev. & Tax Code Section 12206(c) plus the amount of federal Credit allocated under Section 42 computed on one hundred percent (100%) of the qualified basis of the building, or the amount sufficient for financial feasibility.
- (d) Allocation Priorities. The Committee shall give equal priority when allocating state Credit to applications proposing projects with one or more of the following characteristics:
- (1) not eligible for the 130% basis adjustment, pursuant to Section 42(d)(5)(C);
 - (2) HUD HOME program funds are a source of funds and eligible basis is limited to the amount of unadjusted basis; or,

- (3) HUD HOME program funds are a source of funds and state Credit is needed to satisfy HOME program fund match requirements. The local jurisdiction or Community Housing Development Organization shall provide an explanation why other sources are not available to provide matching funds.
- (e) State Credit exchange. Applications for projects not possessing one of the allocation priorities described in the previous subsection may also include a request for state Credit. Following the final reservation cycle of any year, and allocation of state Credit to all applications meeting the above allocation priorities, remaining balances of state Credit may be awarded to applicants having received a reservation of federal Credit during same year, in exchange for the “equivalent” amount of federal Credit. Said exchanges shall be offered at the discretion of the Executive Director, and shall be offered to applications following the order of their selection in the Credit competitions.
- (f) Acquisition credits. State Credit for acquisition basis is allowed only for projects meeting the definition of a project “at risk of conversion,” pursuant to Section 42 and Rev. & Tax Code Section 17058(c)(4).

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10320. Actions by the Committee

- (a) Reservation meetings. Reservations of Credit shall occur only at scheduled reservation meetings of the Committee, except reservations of federal Credit for buildings financed by tax-exempt bonds not counted against the federal credit ceiling may occur at any regularly scheduled meeting of the Committee. The Committee shall announce application filing deadlines and the approximate dates of reservation meetings as early in the year as possible.
- (b) Credit and ownership transfers. No allocation of the federal or state housing credit ceilings, or ownership of a Credit project, may be transferred by a housing credit applicant unless written approval of the Executive Director is obtained prior to the proposed transfer. Said approvals shall not be unreasonably withheld.
 - (1) Any transfer of project ownership or allocation of Credit shall be evidenced by written agreement between the parties to the transfer, including agreements entered into by the transferee and the Committee.
 - (2) The entity acquiring ownership or Credit shall be subject to a “qualifications review” by the Committee to determine if sufficient project development and management experience is present for owning and operating a Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed information describing the experience and financial capacity of said persons, shall be provided to the Committee upon request.
- (c) False information. Upon being informed, or finding, that information supplied by a Credit applicant, or any person acting on behalf of a Credit applicant, pursuant to these regulations, is false or no longer true, the Committee may take appropriate action as described in H & S Code Section 50199.22(b).

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10322. Application Requirements

- (a) **Separate Application.** A separate application is required for each project.
- (b) **Application forms.** Applications shall be submitted on forms provided by the Committee. Applicants shall submit the most current Committee forms and supplementary materials in a manner and number prescribed by the Committee.
- (c) **Late application.** Applications received after an application filing deadline shall not be accepted.
- (d) **Incomplete application.** Applications not meeting all basic threshold requirements and application submission requirements shall be considered incomplete, and shall be disqualified from receiving a reservation of Credit during the cycle in which the application was determined incomplete. Incomplete applications shall be retained by the Committee. An applicant shall be notified by the Committee should their application be deemed incomplete.
- (e) **Complete application.** An application shall be deemed complete when the Committee is able to determine, from the application submission and subsequent submissions expressly allowed by these regulations, that the application meets all program requirements and basic threshold requirements. It is the responsibility of the applicant to provide evidentiary material that demonstrates to the Committee's satisfaction conformance with all program requirements.
- (f) **Application changes.** An application may not be changed following the application filing deadline.
- (g) **Substantially complete application.** Notwithstanding the previous paragraphs of this Section, applicants submitting substantially complete applications with missing documents shall be given five (5) business days, from the date of receipt of Committee notification, to submit said documents to complete the application. The applicant shall be required to confirm that evidentiary documents deemed to be missing from the application were executed on, or prior to, the application filing deadline. If required documents are not submitted within the time provided, the application shall be considered incomplete.
- (h) **Applications not fully evaluated.** Applications not expected to receive a reservation of Credit, due to a relatively low point ranking, may or may not be fully evaluated by the Committee.
- (i) **Standard application documents.** The following documentation relevant to the proposed project is required to be submitted with all applications:
 - (1) **Applicant's Statement.** A signed, notarized statement signifying the responsibility of the applicant to:
 - (A) provide application related documentation to the Committee upon request;
 - (B) be familiar with and comply with Credit program statutes and regulations;

- (C) hold the Committee and its employees harmless from program-related matters;
 - (D) acknowledge the potential for program modifications resulting from statutory or regulatory actions;
 - (E) acknowledge that Credit amounts reserved or allocated may be reduced in some cases when the terms and amounts of project sources and uses of funds are modified;
 - (F) agree to release previously reserved Credit if reapplying for Credit;
 - (G) agree to comply with laws outlawing discrimination;
 - (H) acknowledge that the Committee has recommended the applicant seek tax advice;
 - (I) acknowledge that the application will be evaluated according to Committee regulations, and that Credits are not an entitlement
 - (J) acknowledge that continued compliance with program requirements is the responsibility of the applicant;
 - (K) acknowledge that information submitted to the Committee is subject to the Public Records Act;
 - (L) agree to enter with the Committee into a regulatory contract if Credits are allocated; and,
 - (M) acknowledge, under penalty of perjury, that all information provided to the Committee is true and correct, and that applicant has an affirmative duty to notify the Committee of changes causing information in the application or other submittals to become false.
- (2) The Application form. Completion of all applicable parts of Committee-provided application forms which shall include, but not be limited to:
- (A) General Application Information
 - (i) credit amounts requested
 - (ii) minimum set-aside election
 - (iii) application stage selection
 - (iv) set-aside selection
 - (v) housing type selection
 - (vi) competition selection, including competition worksheet calculations
 - (B) Applicant Information
 - (i) applicant role in ownership
 - (ii) applicant legal status
 - (iii) developer type
 - (iv) contact person
 - (C) Development Team Information
 - (D) Subject property Information
 - (E) Proposed Project Information
 - (i) project type
 - (ii) credit type
 - (iii) building and unit types
 - (F) Land Use Approvals
 - (G) Development Timetable
 - (H) Identification and Commitment Status of Fund Sources
 - (I) Identification of Fund Uses
 - (J) Calculation of Eligible, Qualified and Requested Basis
 - (K) Syndication Cost Description
 - (L) Syndicator Contacts
 - (M) Determination of Credit Need and Maximum Credit Allowable
 - (N) Project Income Determination
 - (O) Restricted Residential Rent and Income Proposal

- (P) Subsidy Information
 - (Q) Operating Expense Information
 - (R) Projected Cash Flow Calculation
 - (S) Basic Threshold Compliance Summary
 - (T) Additional Threshold Selection
 - (U) Tax-exempt Financing Information
- (3) Organizational documents. All applicable proposed or executed organizational documents of the applicant entity, including a detailed plan describing the ownership role of the applicant throughout the low-income use period of the proposed project.
 - (4) Designated contact person. A contract between the applicant and the designated contact person for the applicant signifying the contact person's authority to represent and act on behalf of the applicant with respect to the Application. The Committee reserves its right to contact the applicant directly.
 - (5) Identification of project participants. For all of the following project participants, if applicable, the company name and contact person, address, telephone number, and fax number:
 - (A) developer
 - (B) architect
 - (C) attorney
 - (D) tax professional
 - (E) property management company
 - (F) consultant
 - (6) Identities of interest. Identification of any persons or entities (including affiliated entities) that plan to provide development or operational services to the proposed project in more than one capacity.
 - (7) Legal description. A legal description of the subject property.
 - (8) Site and surrounding area description. A narrative description of the current use of the subject property, all adjacent property land uses, the surrounding neighborhood, and identification and proximity of services available to the subject property, including transportation. Provide labeled photographs or color copies of the subject property and all adjacent properties.
 - (9) Site layout. A layout of the subject property, including the location and dimensions of existing buildings, utilities, and other pertinent features.
 - (10) Rent comparables. Detailed descriptions of three comparable rental properties within one mile of the subject property with similar unit sizes, submitted in a format prescribed by the Committee.
 - (11) Site and comparable unit location. A map indicating the location of the subject property and comparable rental units.
 - (12) Unique site features. A description of unique features of the subject property, estimated to result in either increased project costs or environmental mitigation.

- (13) Construction and design description. A detailed narrative description of the proposed project construction and design, including how the design will serve the targeted population.
- (14) Architectural drawings. Preliminary drawings of the proposed project, including a site plan, building elevations, and unit floor plans (designate square footage). The site plan shall identify all areas or features proposed as project amenities, laundry facilities, recreation facilities and community space. Drawings shall be to a scale that clearly shows all requested information. Blueprints need not be submitted.
- (15) Placed-in-service schedule. A schedule of the projected placed-in-service date for each building.
- (16) Identification of local jurisdiction. The following information related to the local jurisdiction within which the proposed project is located:
 - (A) jurisdiction (e.g., City of Sacramento)
 - (B) chief executive officer and title (e.g., Susan Smith, City Manager)
 - (C) mailing address
 - (D) telephone number
 - (E) fax number
- (17) Sources and uses of funds. The sources and uses of funds description shall separately detail apportioned amounts for residential space and commercial space.
- (18) Financing plan. A detailed description of the financing plan, and proposed sources and uses of funds, to include construction, permanent, and bridge loan sources, and other fund sources, including rent or operating subsidies and reserves. The commitment status of all fund sources shall be described, and non-traditional financing arrangements shall be explained.
- (19) Operating expense comparable. A detailed operating expense budget from an existing similarly sized and located California rental housing project serving a similar tenant population.
- (20) Eligible basis certification. A certification from a tax accountant or tax attorney that project costs included in eligible basis are allowed by IRC Section 42, as amended, and are presented in accordance with standard accounting procedures.
- (21) Use of tax benefits description. If the Credit is not to be offered to investors, a detailed explanation of how the tax benefits will be used by the applicant.
- (22) Justification of syndication costs in basis. If including syndication costs in eligible basis, a justification from a tax attorney or tax accountant for each cost category.
- (23) Terms of syndication agreement. Written estimate(s) from syndicator(s) of equity dollars expected to be raised for the proposed project from the amount of Credit requested, including pay-in schedules, syndication costs (including syndicator consulting fees), and an estimated tax credit factor.
- (24) Tax credit factor certification. If the Credit is not to be syndicated, a letter from a certified public accountant establishing the tax credit factor.
- (25) Utility allowance estimates. Current utility allowance estimates from the local housing authority, in the form of a letter from the local public housing authority

signifying that the proposed project is located in their jurisdiction and that the utility allowance schedule provided is current (ref: IRS Final Regulations T.D. 8520).

- (26) Description of subsidies. If rental assistance, operating subsidies or annuities are proposed, all related contracts and agreements that secure said funds. Identify the source, annual amount, term, number of units receiving assistance, and expiration date of contracts and agreements.
 - (27) Certification of subsidies. Certification by the applicant as to the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the proposed project. (IRC Section 42(m)(2)(C)(ii))
 - (28) Cash flow projection. A 15-year projection of project cash flow. Separate cash flow projections shall be provided for residential and commercial space.
- (j) Additional application documents. In addition to all above requirements of this Section, the following documentation relevant to the proposed project is required to be submitted with applications having certain characteristics, as described below:
- (1) Final Reservation application. Applicants proposing a final reservation application shall provide the following:
 - (A) the company name and contact person, address, telephone number, and fax number of the:
 - (i) general contractor, and
 - (ii) syndication firm or investor;
 - (B) an executed construction contract;
 - (C) a recorded deed of trust for the construction loan;
 - (D) a current title report (dated no later than 30 days before the application deadline);
 - (E) binding commitments for permanent financing;
 - (F) binding commitments for any other financing required to complete project construction;
 - (G) a construction lender trade payment breakdown of approved construction costs;
 - (H) evidence that all discretionary (subject to public comment) local land use approvals have been obtained; and,
 - (I) an executed partnership agreement between the applicant and investor verifying the expected equity raise, pay-in schedule and costs of syndication.

The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.

- (2) Placed-In-Service application. Applicants proposing a placed-in-service application shall provide, in addition to the aforementioned submission requirements of a Final Reservation Application:
 - (A) certificates of occupancy for each building in the project (or a certificate of completion for rehabilitation projects). If acquisition Credit are requested, evidence of the placed in service date for acquisition purposes, and evidence that all rehabilitation is completed;

- (B) a third party audited certification, on a Committee-provided form, of actual total project costs incurred;
- (C) detailed breakdown of incurred costs and placed-in-service dates, shown separately for each building, on a Committee-provided form. If the placed-in service date(s) denoted are different from the date on the certificate of occupancy, a detailed explanation is required;
- (D) photographs of the completed building(s);
- (E) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;
- (F) a certification from the syndicator of equity raise and syndication costs in a Committee-provided format;
- (G) a project ownership profile on a Committee-provided form;
- (H) a copy of any cost certification submitted to and approved by RHS or other lender;
- (I) a list of all amenities provided at the project site. If the list differs from that submitted at application, an explanation must be provided.
- (J) a description of any charges that may be paid by tenants in addition to rent, with an explanation of how such charges affect eligible basis.

The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.

- (3) Acquisition Credit application. Applicants requesting acquisition Credit shall provide:
 - (A) a title report documenting the acquisition meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,
 - (B) if a waiver of the 10-year ownership rule is necessary, provide a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).
- (4) Rehabilitation application. Applicants proposing rehabilitation of an existing structure shall provide:
 - (A) an appraisal prepared by a California certified appraiser within one year of application submission that determines the;
 - (i) land value of the subject property;
 - (ii) the replacement cost of the proposed project with detailed estimates of structures costs, site work, and soft development costs; and,
 - (iii) the highest and best use value of the proposed project as residential rental property.
 - (B) A purchase contract verifying the sales price of the subject property.
- (5) Acquisition of Occupied Housing application. Applicants proposing acquisition of occupied rental residential housing shall provide income, rent and family size information for the current tenant population.
- (6) Tenant relocation plan. Applicants proposing relocation of tenants shall provide a detailed relocation plan including a budget with an identified fund source.
- (7) Owner-occupied Housing application. Applicants proposing owner-occupied housing projects of four units or less, involving acquisition or rehabilitation, shall provide evidence from an appropriate official substantiating that the building is part of a development plan of action sponsored by a State or local government or a qualified nonprofit organization (IRC Section 42(i)(3)(E)).

- (8) Nonprofit set-aside application. Applicants requesting Credit from the Nonprofit set-aside, as defined by IRC Section 42(h)(5), shall provide the following documentation:
 - (A) IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation;
 - (B) proof of designation as a nonprofit corporation under Health and Safety Code Section 50091;
 - (C) proof that one of the exempt purposes of the corporation is to provide low-income housing;
 - (D) a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project; and,
 - (E) a third party legal opinion that the nonprofit organization is not affiliated with or controlled by a for-profit organization, and the basis for said determination.
- (9) Rural set-aside application. Applicants requesting Credit from the Rural Set-Aside, as defined by H & S Code Section 50199.21, shall provide verification that the proposed project is located in an eligible rural area. (Evidence that project is located in an area eligible for financing from RHS shall be a letter from RHS.)
- (10) RHS Section 515 program application. Rural housing applicants requesting Credit from amounts made available for projects financed by the RHS Section 515 program shall submit an approved RHS Form AD 622.
- (11) Threshold Basis Limit increase justification. Applicants submitting requests to exceed Threshold Basis Limits by up to an additional fifteen percent (15%) shall provide a narrative explanation and budget justification to evidence qualification for increase.
- (12) HOME funds match. Applicants requesting state Credit to match HOME funds shall provide a letter from the local jurisdiction stating why matching funds are not being provided.
- (k) Re-application. Applications for projects holding a reservation and/or allocation of Credit shall forfeit performance and allocation fees paid to the Committee for said project. Applications for projects holding a reservation and or allocation of Credit shall return to the Committee said reservations and allocations before submitting the application, except for applications that provide evidence that building permits necessary to complete construction have been obtained for at least fifteen percent (15%) of the residential improvements planned. Said applications shall be considered “re-applications” and shall be: submitted during a scheduled application cycle, accompanied by an application filing fee, and reviewed by the Committee under the rules of the cycle for which the applicant is re-applying. The developer fee in the re-application may not exceed the developer fee amount used when establishing the original reservation of Credit. This provision shall not apply to tax-exempt bond projects.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10325. Application Selection Criteria - Credit Ceiling Applications

- (a) General. All applications not requesting federal Credit under the requirements of IRC Section 42(h)(4) for buildings financed by tax-exempt bonds and all applications for state Credit shall compete for reservations of credit ceiling amounts during designated reservation cycles.
- (b) Authority. Selection criteria shall include those required by IRC Section 42(m), H & S Code Section 50199.14, and Rev. & Tax Code Sections 12206, 17058 and 23610.5.
- (c) Credit ceiling application competitions. Applications received in a reservation cycle, and required to compete for Credit pursuant to (a) above, shall be scored and ranked, according to the below described criteria.
 - (1) Affordability competition. Applications for Credit from the Affordability competition shall be scored and ranked against other applications within that competition. Applicants may improve their score by committing to deeper income targeting and lower rents, if income and rent restrictions are applied for the entire term of the compliance period.
 - (A) Primary criteria. Application scores shall be determined by subtracting the proposed project average income target for low-income units, from the “threshold income target” for the applicable housing type, as defined in this subsection, and then, subject to conditions below, multiplying the result by: one hundred (100) for Large Family, At-risk, Senior and Non-targeted applications; and one hundred sixty (160) for SRO and Special Needs applications. Effectively, one point, or 1.6 points shall be awarded for each percentage point difference the proposed average income target is below the threshold income target. The greater the number of points achieved, the higher shall be the application ranking.
 - (i) Average income targets are subject to “income floor limits,” as defined immediately below, for purposes of application scoring only. No additional points shall be awarded for income targets below the income floor limits established for each housing type for purposes of this subsection.
 - (ii) Threshold income targets and income floor limits for each housing type, as further defined in subsection (g), are as follows:

Housing Type	Threshold Income Target <u>(% of median income)</u>	Income Floor Limit <u>(% of median income)</u>
Large Family	56%	40%
SRO	45%	35%
At-risk	56%	40%
Special Needs	45%	35%
Senior	56%	40%
Non-Targeted	56%	40%

- (iii) On-site property manager units shall not be included as low-income units for purposes of determining the proposed project average income target.
- (iv) Applicants shall distribute proposed income targets proportionally among all proposed project unit sizes.

- (B) Tie-breaker. In the event that two or more applications receive the same score under the Affordability competition primary criteria, tie-breaker criteria shall be applied to establish the order of selection priority. The tie-breaker shall establish, by lottery, a priority ranking among applications with the same score, prior to selection of applications for review and evaluation. The earlier the application is selected by lottery, the higher shall be its rank among applications with the same score.
- (2) Credit Utilization competition. Applications for Credit from the Credit Utilization competition shall be scored and ranked against other applications within that competition. Applicants may improve their score by requesting lesser amounts of unadjusted eligible basis be used in the determination of Credit amounts.
- (A) Primary criteria. Application scores shall be determined by subtracting total requested unadjusted eligible basis from the Threshold Basis Limit, then dividing the result by the Threshold Basis Limit, and then multiplying by one hundred (100), subject to conditions below. Effectively, one point shall be awarded for each percentage point that requested unadjusted eligible basis is below the Threshold Basis Limit of the proposed project. The greater the number of points achieved, the higher shall be the application ranking.
 - (i) For purposes of application scoring only, requested eligible basis is subject to a floor limit of twenty percent (20%) below the Threshold Basis Limit of the proposed project. No more than twenty (20) points shall be awarded for reductions in requested eligible basis.
 - (ii) If the resultant score under this criteria is less than zero, zero (0) points shall be awarded.
 - (B) Tie-breakers. In the event that two or more applications receive the same score under the Credit Utilization competition primary criteria, tie-breaker criteria shall be applied to establish the order of selection priority. The following tie-breakers shall be employed:
 - (i) Affordability tie-breaker. The first tie-breaker shall be determined by subtracting the proposed project average income target for low-income units, from the “threshold income target” for the applicable housing type, as defined in this subsection, and then multiplying the result by one hundred (100), subject to conditions below. Effectively, one point shall be awarded for each percentage point difference the proposed average income target is below the threshold income target. The greater the number of points achieved, the higher shall be the application ranking.
 - (I) Reductions in income targeting are subject to “income floor limits,” as defined below, for purposes of application scoring only. No additional points shall be awarded for income targeting below the income floor limits established for each housing type for purposes of this subsection.
 - (II) Threshold income targets and income floor limits for each housing type, as further defined in subsection (g), are as follows:

Housing Type	Threshold Income Target (% of median income)	Income Floor Limit (% of median income)
Large Family	56%	46%
SRO	45%	35%
At-risk	56%	46%
Special Needs	45%	35%
Senior	56%	46%
Non-Targeted	56%	46%

- (III) On-site property manager units shall not be included as low-income units for purposes of determining the proposed project average income target.
 - (IV) Applicants shall distribute proposed income targets proportionally among all proposed project unit sizes.
 - (ii) Lottery tie-breaker. In the event that two or more applications receive the same score under the Affordability tie-breaker, a second tie-breaker shall establish, by lottery, a priority ranking among applications with the same score, prior to selection of applications for review and evaluation. The earlier the application is selected by lottery, the higher shall be its rank among applications with the same score.
- (d) Applications for both competitions. Applicants may submit an application to the Committee requesting participation in both the Affordability and Credit Utilization competitions, with the following conditions on the application:
 - (1) only one proposed average income target shall be considered for both competitions;
 - (2) only one requested unadjusted eligible basis amount shall be considered for both competitions;
 - (3) only one lottery number shall be established for both competitions; and,
 - (4) the proposed average income target and the requested unadjusted eligible basis from the application shall be used for purposes of implementing Section 10327 and subsection 10328(a).
- (e) Application selection for evaluation. Following the scoring and ranking of project applications in accordance with the above criteria, subject to conditions described in these regulations, reservations of Credit shall be made for those applications of highest rank in the following manner:
 - (1) Set-aside application selection. Beginning with the top-ranked application from the Affordability competition, followed by the top-ranked application from the Credit Utilization competition, and alternating in rank order, the Nonprofit, Rural, and Small Development set-asides, as described in Section 10315, shall be reserved by selecting applications eligible for set-aside categories. The Nonprofit set-aside shall be reserved first (including the homeless assistance apportionment), followed by the Rural set-aside (including the RHS Section 515 program apportionment), and finally the Small Development set-aside.

- (A) For an application to receive a reservation, there shall be at least one dollar of Credit not yet reserved in the set-aside, housing type apportionment, competition allotment, and geographic apportionment pertaining to said application, as defined in Section 10315, as well as, at least one dollar of federal Credit not yet reserved, and, if requested, one dollar of state Credit not yet reserved.
 - (B) If there is a zero or negative amount of Credit in any category requested by the applicant, the application shall be by-passed in favor of the next highest-ranking application.
 - (C) After a set-aside is fully reserved, all remaining applications competing within the set-aside shall compete in the General Pool.
- (2) General Pool application selection. Credit remaining in housing type apportionments, as defined in subsection 10315(d), following reservations to all set-aside categories shall be considered "General Pool Credit." For each housing type, beginning with the highest ranking application in the Affordability competition, followed by the highest ranking application in the Credit Utilization competition, one application from each competition shall receive a General Pool Credit reservation. The first housing type to receive two reservations shall be Large Family, followed by SRO, then At-risk, then Special Needs, then Seniors, then Non-targeted, then another two Large Family, and so on, until all housing type apportionments are reserved, subject to the following:
 - (A) For an application to be selected, there shall be at least one dollar of Credit not yet reserved in the housing type apportionment, competition allotment, and geographic apportionment pertaining to said application, as defined in Section 10315, as well as, at least one dollar of federal Credit not yet reserved, and, if requested, one dollar of state Credit not yet reserved.
 - (B) If there is a zero or negative amount of Credit in any category requested by the applicant, the application shall be by-passed in favor of the next highest-ranking application.
- (3) In the event there is an insufficient number of eligible, complete and financially feasible applications to reserve remaining Credit set-aside, apportioned or allotted, unless otherwise directed by these regulations, said Credit shall be made available to applications of the highest rank as determined by this Section.
- (f) Application evaluation. To receive a reservation of Credit, applications selected pursuant to subsection (e) of this Section, shall be evaluated, pursuant to IRC Section 42, H & S Code Sections 50199.4 through 50199.22, Rev. & Tax Code Sections 12206, 17058, and 23610.5, and these regulations to determine if; eligible, by meeting all program eligibility requirements; complete, which includes meeting all basic threshold and additional threshold requirements; and financially feasible.
- (g) Basic thresholds. An application shall be determined to be complete by demonstration of meeting the following basic threshold requirements. All basic thresholds shall be met at the time the application is filed through a presentation of conclusive, documented evidence to the Committee's satisfaction.
 - (1) Housing need and demand. Applicants shall provide evidence that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located. Evidence shall be conclusive, and include the most recent documentation available (prepared within one year). Evidence of housing need and demand shall include:

- (A) relevant sections of the Consolidated Plan of the local government jurisdiction within which the subject property is located, if available;
 - (B) evidence of public housing waiting lists from the local housing authority; and,
 - (C) detailed descriptions of three comparable rental properties within one mile of the subject property with similar unit sizes, submitted in a format prescribed by the Committee, accompanied by an area map with rent comparable locations.
- (2) Demonstrated site control. Applicants shall provide evidence that the subject property is, and will remain within the control of the applicant from the time of application submission.
- (A) Site control may be evidenced by:
 - (i) a current title report (within 90 days of application) showing the applicant holds fee title;
 - (ii) an executed lease agreement between the applicant and the owner of the subject property;
 - (iii) an executed disposition and development agreement between the applicant and a public agency; or,
 - (iv) a valid, enforceable contingent purchase and sale agreement or option agreement between the applicant and the owner of the subject property.
 - (B) A current title report (within 90 days of application) shall be submitted with all applications for purposes of this threshold requirement.
- (3) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for fifty percent (50%) of the construction financing, or fifty percent (50%) of the permanent financing, for the proposed project's estimated total construction or total permanent financing requirements. An "enforceable financing commitment" shall meet the following conditions:
- (A) be in writing, and may be in the form of a loan or grant;
 - (B) subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Credit;
 - (C) if permanent financing, shall have a term of at least fifteen (15) years;
 - (D) if a variable or adjustable interest rate permanent loan is proposed, shall demonstrate feasibility for fifteen (15) years at the ceiling interest rate; and,
 - (E) shall be from a lender other than a mortgage broker, the applicant, or an identity of interest of the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending.
- (4) Local approvals. Applicants shall provide evidence that, at the time the application is filed, all land use and zoning approvals have been obtained that are necessary to develop the proposed project as presented in the application, although "conditional" use permits, variances, and density bonuses may be outstanding. The Committee may require, as evidence to meet this requirement, submission of a Committee-provided form letter to be signed by an appropriate local government planning official of the applicable local jurisdiction.

- (5) Financial feasibility. Applicants shall provide the financing plan for the proposed project, and shall demonstrate the proposed project is financially feasible and viable as a qualified low income housing project throughout the extended use period. A fifteen-year pro forma of all revenue and expense projections is required, along with a comparable operating budget from a similar existing occupied project, with detailed information as requested on Committee forms. The financial feasibility analysis shall use all underwriting criteria specified in Section 10327.
- (6) Sponsor characteristics. Applicants shall provide evidence that as a team, proposed project participants possess the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee shall, in its sole discretion, determine if any of the evidence provided shall disqualify the applicant from participating in the Credit programs, or if additional team members need be added to appropriately perform all program requirements. The following documentation is required to be submitted at the time of application:
- (A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);
 - (B) for all participants, a description of other Credit project involvement in California or other states, on forms provided by the Committee;
 - (C) for each of the following participants, a copy of a contract to provide services related to the proposed project;
 - (i) Attorney(s) and or Tax Professional(s)
 - (ii) Architect
 - (iii) Property Management Agent
 - (iv) Consultant
 - (D) for the applicant and all general partners of the project, a description of any defaults or foreclosures on residential rental properties, or a signed statement affirming that no such defaults or foreclosures occurred;
 - (E) for other participants, a description of any defaults or foreclosures on residential rental properties where ownership in the property exceeded ten percent (10%), or a signed statement affirming that no such defaults or foreclosures occurred.
- (7) Minimum construction standards. Applicants shall provide a statement of their intent to utilize landscaping and construction materials which are compatible with the neighborhood in which the proposed project is to be located, and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected. Additionally, the statement of intent shall note that the following minimum specifications will be incorporated into the project design:
- (A) Landscaping. A variety of plant and tree species shall be provided in sufficient quantities based on landscaping practices in the general market area and low maintenance needs.
 - (B) Roofs. Shingle roofing shall carry a three-year subcontractor guarantee and a 20-year manufacturer's warranty.
 - (C) Exterior doors. Solid core, flush, paint or stain grade exterior doors shall be made of metal clad or hardwood faces, with a standard one year guarantee and all six sides factory primed.
 - (D) Appliances. A garbage disposal shall be provided in units with full kitchens. Energy efficient appliances, including frost free refrigerators shall be provided.
 - (E) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blinds.

- (F) Water heater. For units with individual water heaters, minimum capacities are to be 30 gallons for one- and two-bedroom units and 40 gallons for three-bedroom units or larger. All individual water heaters shall be gas fired and equipped with pressure and temperature relief valves.
 - (G) Floor coverings. For light and medium traffic areas vinyl tile shall be at least 3/32" thick; for heavy traffic areas it shall be a minimum 1/8" thick. Carpet complying with HUD/FHA UM 44C shall be provided at all spaces with the exception of the kitchen, bathroom, and entry areas.
- (8) Deferred-payment financing, grants and subsidies. Applicants shall provide evidence that all deferred-payment financing, grants and subsidies are "committed" at the time of application.
- (A) Evidence provided shall signify the form of the commitment, the loan, grant or subsidy amount, the length of the commitment, conditions of participation, and express authorization from the governing body, or an official expressly authorized to act on behalf of said governing body, committing the funds.
 - (B) Commitments shall be final and not preliminary, and only subject to conditions within the control of the applicant, with one exception, the attainment of other financing sources including an award of Credit.
 - (C) Fund commitments shall be from funds within the control of the entity providing the commitment at the time of application.
 - (D) Substantiating evidence of the value of local fee waivers or land write downs is required.
- (9) Project size limitations. Project size limitations shall apply to all applications filed, pursuant to this Section.
- (A) Unit number limits are as follows:
 - (i) Rural set-aside applications - eighty (80) units maximum
 - (ii) Other than rural set-aside applications - two-hundred (200) units maximum
 - (B) Units, for purposes of this subsection, shall:
 - (i) include low-income units;
 - (ii) not include market rate units or manager's units.
 - (C) The total "units" in one or more separate applications proposing projects within one-fourth (1/4) mile of one another, filed at any time within approximately a twelve (12) month period, shall, for purposes of this subsection be subject to the above project size limitations.
- (h) Additional threshold requirements. To qualify for Credit apportioned to various housing types, as described in Section 10315(e), the applicant shall meet the following additional threshold requirements:
- (1) Large Family projects. To be eligible for the large family housing type apportionment, the application shall meet the following additional threshold requirements.
 - (A) Threshold average income target is fifty-six percent (56%) of the area median income;
 - (B) At least thirty percent (30%) of the units in the project shall be three-bedroom or larger units, with the remaining units configured based on the demand established in the basic threshold requirements;
 - (C) Three-bedroom units shall include at least 1,000 square feet of living space and four-bedroom units shall include at least 1,200 square feet of living space, unless these restrictions conflict with the requirements of another

- governmental agency to which the project is subject to approval (bedrooms shall be large enough to accommodate two persons each and living areas shall be adequately sized to accommodate families based on two persons per bedroom);
- (D) Four-bedroom and larger units shall have a minimum of two full bathrooms;
 - (E) If a Large Family project competes for Credit in the Small Development set-aside, then fifty percent (50%) of the units in the project shall have three-bedroom or larger units;
 - (F) The project shall provide outdoor play/recreational facilities suitable for children of all ages. Small developments, defined in Section 10315(d), are exempt from this requirement;
 - (G) The project shall provide an appropriately-sized common area(s). For purposes of this part, common areas shall include all interior common areas, such as the rental office and meeting rooms, but shall not include laundry rooms or manager living units, and shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1000 square feet; projects from 61 to 100 total units, at least 1400 square feet; projects over 100 total units, at least 1800 square feet. Small developments, defined in Section 10315(d), are exempt from this requirement;
 - (H) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;
 - (I) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 10 units. If no centralized laundry facilities are provided, washers and dryers shall be provided in each unit;
 - (J) Projects are subject to a minimum low-income use period of 55 years.
- (2) Senior projects. To be eligible for the senior housing type apportionment, the application shall meet the following additional threshold requirements:
- (A) Threshold average income target is fifty-six percent (56%) of the area median income;
 - (B) Senior units shall be restricted to residents 55 years of age or older (at least one family member);
 - (C) The project shall be on a suitable site. Access to basic services shall be available by other than resident-owned transportation;
 - (D) Projects over two stories shall have an elevator;
 - (E) No more than twenty percent (20%) of the low-income units in the project shall be two-bedroom units. One larger unit may be included for use as a manager's unit;
 - (F) Emergency call systems shall be included in all units, with capability for 24-hour monitoring;

- (G) Common area(s) shall be provided on site, or within approximately one-half mile of the subject property. For purposes of this part, common areas shall be allowed to include all interior common areas, such as the rental office and meeting rooms, but shall not include laundry rooms or manager living units, and shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1000 square feet; projects from 61 to 100 total units, at least 1400 square feet; projects over 100 total units, at least 1800 square feet. Small developments, defined in Section 10315(d), are exempt from this requirement;
 - (H) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;
 - (I) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. If no centralized laundry facilities are provided, washers and dryers shall be provided in each of the units;
 - (J) Projects are subject to a minimum low-income use period of 55 years.
- (3) SRO projects. To be eligible for the Single Room Occupancy (SRO) housing type apportionment, the application shall meet the following additional threshold requirements:
- (A) Threshold average income target is forty-five percent (45%) of the area median income;
 - (B) SRO units are efficiency units which may include a complete private bath and kitchen but do not have a separate bedroom. No more than five percent (5%) of the total units may contain a separate bedroom;
 - (C) At least one bath shall be provided for every eight units;
 - (D) If the project does not have a rental subsidy committed, the applicant shall demonstrate that the target population can pay the proposed rents. For instance, if the target population will rely on General Assistance, the applicant shall show that those receiving General Assistance are willing to pay rent at the level proposed;
 - (E) The project configuration, including community space and kitchen facilities, shall meet the needs of the population;
 - (F) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development cost;
 - (G) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units;
 - (H) Projects are subject to a minimum low-income use period of 55 years;
 - (I) A ten percent (10%) vacancy rate shall be used unless otherwise approved by the Committee. Justification of a lower rate shall be included.
- (4) Special Needs project. To be eligible for the Special Needs housing type apportionment, the application shall meet the following additional threshold requirements:
- (A) Threshold average income target is forty-five percent (45%) of the area median income;
 - (B) Third party verification from a federal, state or local agency of the availability of services appropriate to the targeted population;

- (C) The units/building configurations (including community space) shall meet the specific needs of the population;
 - (D) If the project does not have a rental subsidy committed, the applicant shall demonstrate that the target population can pay the proposed rents. For instance, if the target population will rely on General Assistance, the applicant shall show that those receiving such assistance are willing to pay rent at the level proposed;
 - (E) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;
 - (F) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units;
 - (G) Projects are subject to a minimum low-income use period of 55 years;
 - (H) A ten percent (10%) vacancy rate shall be used for proforma purposes unless otherwise approved by the Committee. Justification of a lower rate shall be included;
 - (I) Where services are required as a condition of occupancy, special attention shall be paid to the assessment of services costs as related to maximum allowable Credit rents. See IRS Notices 89-6 and IRC Revenue Ruling 91-38. A tax professional's opinion as to compliance with IRC Section 42 may be required by the Committee.
- (5) At-risk projects. To be eligible for the At-risk housing type apportionment, the application shall meet the requirements of Rev. & Tax Code subsection 17058(c)(4), the following additional threshold requirements, and other requirements as outlined in this subsection:
- (A) Threshold average income target is fifty-six percent (56%) of median income;
 - (B) Projects are subject to a minimum low-income use period of 55 years; and,
 - (C) Project application eligibility criteria include:
 - (i) before applying for Credit, the project must meet the At-risk eligibility requirements under the terms of applicable federal and state law. A project application will not qualify for this apportionment if it is determined by HUD or RHS that no incentives will be offered because the project is not at-risk of converting due to market or other conditions, or the appraisal required by these regulations in Section 10322 determines the highest and best use value as rental housing to be less than outstanding project debt;
 - (ii) the project must currently possess either federal mortgage insurance, a federal loan guarantee, federal project-based rental assistance, or, have its mortgage held by a federal agency, or be owned by a federal agency;
 - (iii) as of the date of application filing, the applicant shall have sought available federal incentives to continue the project as low-income housing, including insured loans, direct loans, loan forgiveness, grants, rental subsidies, renewal of existing rental subsidy contracts, etc.;
 - (iv) subsidy contract expiration or mortgage prepayment eligibility shall occur no later than three years from the first day of the year in which the application is filed;

- (v) The applicant agrees to renew all Section 8 HAP contracts for their full term and shall seek additional renewals throughout the project's useful life, if applicable;
 - (vi) At least thirty percent (30%) of project tenants shall, at the time of application, have incomes at or below sixty percent (60%) of area median income;
 - (vii) The gap between total development costs (excluding developer fee), and all loans and grants to the project (excluding Credit) is greater than fifteen percent (15%) of total development costs; and,
 - (viii) A public agency shall provide direct or indirect long-term financial support of at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development cost.
- (6) Non-targeted projects. To be eligible for the Non-targeted housing type apportionment, the application shall meet the following additional threshold requirements:
 - (A) Threshold average income target is fifty-six percent (56%) of median income; and,
 - (B) A minimum low-income use period of 30 years.
- (i) Waiting list. At the conclusion of the last reservation cycle of any calendar year, and at no other time, the Committee shall establish a waiting list of pending applications already scored, ranked and evaluated in anticipation of utilizing any Credit which may be returned to the Committee. The waiting list shall expire on the date specified in the Committee's resolution establishing the waiting list. If no date is specified, the waiting list shall expire at midnight on December 31 of the year the list is established.
 - (1) The waiting list shall be established without consideration of geographic and housing type apportionments, and with consideration of the highest ranking applications in the set-aside and competition allotments, as defined in Section 10315.
 - (2) In the event federal Credit become available for a waiting list application requesting both federal and state Credit, and state Credit are not at that time available, the Committee shall allow said applicants to substitute other funds from any source in an amount equivalent to the amount of funds anticipated from the sale of requested state Credit. In no case shall the tax credit factor, loan and grant interest rates and terms, or the total project development cost in any way be altered from that in the application for purposes of achieving project feasibility through the option to substitute state Credit.
 - (A) At the earlier of the date upon which a request is made for a carryover allocation or tax forms, the applicant shall evidence the availability of said funds according to application requirements of these regulations pertaining to the type of fund source.

- (B) The option to substitute state Credit with other funds shall be limited to applications receiving an offer of federal Credit that are returned to the Committee on or before November 1 of the year of the applicable waiting list. After being offered a reservation of federal Credit, the applicant shall be allowed ten (10) days to provide the Committee with evidence of the availability and willingness of a financing source, that shall not be substituted at a later date with another source, to cover the financing gap remaining due to the absence of state Credit (e.g. a letter of interest). At such time as is required for filing of a carryover allocation, the availability of funds to cover said financing gap shall be evidenced in accordance with subsection 10325(g)(8). Once a reservation of federal Credit has been accepted for an application pursuant to this subsection, the application shall not be eligible for state Credit should additional state Credit become available for waiting list applications.
- (3) Should there not be sufficient returned Credit to fully fund the next ranked application on the waiting list, a reservation of all remaining Credit may be made to that application, and any first recaptured or otherwise available Credit in the following year may be reserved for that application up to the maximum amount previously approved by the Committee.
- (j) Carry forward of Credit. Pursuant to federal and state statutes, the Committee may carry forward any unused Credit or Credit returned to the Committee for allocation in the next calendar year.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10326. Application Selection Criteria - Tax-exempt bond applications

- (a) General. All applications requesting federal Credit under the requirements of IRC Section 42(h)(4) for buildings and land, the aggregate basis of which is financed at least fifty percent (50%) by tax-exempt bonds, and not requesting state Credit, shall be eligible to apply under this Section for a reservation and allocation of federal Credit.
- (b) Applicable criteria. Selection criteria for applications reviewed under this Section shall include those required by IRC Section 42(m), this Section, and Sections 10300, 10302, 10305, 10320, 10322, 10327, 10330, 10335, and 10337 of these regulations. Other sections of these regulations shall not apply.
- (c) Application review period. The Committee may require up to forty-five (45) days to review an application, and an additional fifteen (15) days to consider the application for a reservation of Credit.
- (d) Issuer determination of Credit. The issuer of the bonds may determine the federal Credit amount, with said determination verified by the Committee and submitted with the application. The issuer may request the Committee determine the Credit amount by including such request in the application.
- (e) Additional application requirements. Applications submitted pursuant to this Section shall provide the following additional information:

- (1) The name, phone number and contact person of the bond issuer; and,
 - (2) Verification of the availability of the bond financing, the bond issuance date, and the percentage of aggregate basis financed by the bonds.
- (f) Application evaluation. To receive a reservation of Credit, applications submitted under this Section, shall be evaluated, pursuant to IRC Section 42, H & S Code Sections 50199.4 through 50199.22, Rev. & Tax Code Sections 12206, 17058, and 23610.5, and these regulations to determine if; eligible, by meeting all program eligibility requirements; complete, which includes meeting all basic threshold requirements; and financially feasible.
- (g) Basic thresholds. An application shall be determined to be complete by demonstration of meeting the following basic threshold requirements. All basic thresholds shall be met at the time the application is filed through a presentation of conclusive, documented evidence to the Committee's satisfaction.
- (1) Housing need and demand. Applicants shall provide evidence that the type of housing proposed, including proposed rent levels, is needed and affordable to the targeted population within the community in which it is located. Evidence shall be conclusive, and include the most recent documentation available (prepared within one year). Evidence of housing need and demand shall include, if available and accessible:
 - (A) relevant sections of the Consolidated Plan of the local government jurisdiction within which the subject property is located;
 - (B) evidence of public housing waiting lists from the local housing authority; and,
 - (C) detailed descriptions of three comparable rental properties within one mile of the subject property with similar unit sizes, submitted in a format prescribed by the Committee, accompanied by an area map with rent comparable locations.
 - (2) Demonstrated site control. Applicants shall provide evidence that the subject property is, and will remain within the control of the applicant from the time of application submission.
 - (A) Site control may be evidenced by:
 - (i) a current title report (within 90 days of application) showing the applicant holds fee title;
 - (ii) an executed lease agreement between the applicant and the owner of the subject property;
 - (iii) an executed disposition and development agreement between the applicant and a public agency; or,
 - (iv) a valid, enforceable contingent purchase and sale agreement or option agreement between the applicant and the owner of the subject property.
 - (B) A current title report (within 90 days of application) shall be submitted with all applications for purposes of this threshold requirement.

- (3) Local approvals. Applicants shall provide evidence that, at the time the application is filed, all land use and zoning approvals have been obtained that are necessary to develop the proposed project as presented in the application, although “conditional” use permits, variances, and density bonuses may be outstanding. The Committee may require, as evidence to meet this requirement, submission of a Committee-provided form letter to be signed by an appropriate local government planning official of the applicable local jurisdiction.
- (4) Financial feasibility. Applicants shall provide the financing plan for the proposed project, and shall demonstrate the project's financial feasibility and viability as a qualified low income housing project throughout the extended use period. A 15-year pro forma of all revenue and expense projections is required, along with a comparable operating budget from a similar existing occupied project, with detailed information as requested on Committee forms. The financial feasibility analysis shall use all underwriting criteria specified in Section 10327 below.
- (5) Sponsor characteristics. Applicants shall provide evidence that as a team, proposed project participants possess the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee shall, in its sole discretion, determine if any of the evidence provided shall disqualify the applicant from participating in the Credit programs, or if additional team members need be added to appropriately perform all program requirements. The following documentation is required to be submitted at the time of application:
- (A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);
 - (B) for all participants, a description of other Credit project involvement in California or other states, on forms provided by the Committee;
 - (C) for each of the following participants, a copy of a contract to provide services related to the proposed project;
 - (i) Attorney(s) and or Tax Professional(s)
 - (ii) Architect
 - (iii) Property Management Agent
 - (iv) Consultant
 - (D) for the applicant and all general partners of the project, a description of any defaults or foreclosures on residential rental properties, or a signed statement affirming that no such defaults or foreclosures occurred.
 - (E) for other participants, a description of any defaults or foreclosures on residential rental properties where ownership in the property exceeded ten percent (10%), or a signed statement affirming that no such defaults or foreclosures occurred.
- (6) Minimum construction standards. Applicants shall provide a statement of their intent to utilize landscaping and construction materials which are compatible with the neighborhood in which the proposed project is to be located, and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected. Additionally, the statement of intent shall note that the following minimum specifications will be incorporated into the project design:
- (A) Landscaping. A variety of plant and tree species shall be provided in sufficient quantities based on landscaping practices in the general market area and low maintenance needs.
 - (B) Roofs. Shingle roofing shall carry a three-year subcontractor guarantee and a 20-year manufacturer's warranty.

- (C) Exterior doors. Solid core, flush, paint or stain grade exterior doors shall be made of metal clad or hardwood faces, with a standard one year guarantee and all six sides factory primed.
 - (D) Appliances. A garbage disposal shall be provided in units with full kitchens. Energy efficient appliances, including frost free refrigerators shall be provided.
 - (E) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blinds.
 - (F) Water heater. For units with individual water heaters, minimum capacities are to be 30 gallons for 1 and 2 bedroom units and 40 gallons for 3 bedroom units or larger. All individual water heaters shall be gas fired and equipped with pressure and temperature relief valves.
 - (G) Floor coverings. For light and medium traffic areas vinyl tile shall be at least 3/32" thick; for heavy traffic areas it shall be a minimum 1/8" thick. Carpet complying with HUD/FHA UM 44C shall be provided at all spaces with the exception of the kitchen, bathroom, and entry areas.
- (h) Additional condition on applications. The following additional condition shall apply to applications for Credit pursuant to this Section: If not currently possessing a bond allocation for the proposed project, at the time the application is considered by the Committee, the applicant shall have either applied for a bond allocation at the California Debt Limit Allocation Committee's (CDLAC) next scheduled meeting, or shall have received an initial loan commitment from the California Housing Finance Agency (CHFA).
- (i) Tax-exempt bond reservations. Reservations of Credit shall be subject to conditions as described in this Section and applicable statutes. Reservations of Credit shall be conditioned upon the Committee's receipt of the reservation fee described in Section 10335 and an executed reservation letter bearing the applicant's signature accepting the reservation within twenty (20) calendar days of the Committee's notice to the applicant of the reservation.
- (j) Additional conditions on reservations. The following additional conditions shall apply to reservations of Credit pursuant to this Section:
- (1) CDLAC allocation. The applicant shall have received a bond allocation from CDLAC for the proposed project;
 - (2) Bonds issued. Bonds shall be issued within the time limit specified by CDLAC, if applicable; and,
 - (3) other conditions, including cancellation, disqualification and other sanctions imposed by the Committee in furtherance of the purposes of the Credit programs.
- (k) Placed-in-service. Upon completion of construction of the proposed project, the applicant shall submit documentation required by the conditions of the tax-exempt bond reservation including an executed regulatory agreement, provided by the Committee, and the compliance monitoring fee required by Section 10335. The Committee shall determine if all conditions of the reservation have been satisfied. Substantive changes to the approved application, in particular, changes to the financing plan or costs, need to be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. If all conditions have been satisfied, tax forms shall be issued reflecting an amount of Credit not to exceed the maximum amount of Credit reserved for the proposed project.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10327. Financial Feasibility and Determination of Credit Amounts

- (a) General. Applicants shall demonstrate the proposed project is financially feasible as a qualified low income housing project. Development and operational costs shall be reasonable and within limits established by the Committee, and may be adjusted by the Committee, at any time prior to issuance of tax forms. Approved sources of funds shall be sufficient to cover approved uses of funds. If determined that sources of funds are insufficient, an application shall be deemed not to have met basic threshold requirements and shall be considered incomplete. Following its initial and subsequent feasibility determinations, the Committee may determine a lesser amount of Credit for which the proposed project is eligible, pursuant to the requirements herein, and may rescind a reservation or allocation of Credit in the event that the maximum amount of Credit achievable is insufficient for financial feasibility.
- (b) Limitation on determination. A Committee determination of financial feasibility in no way warrants to any applicant, investor, lender or others that the proposed project is, in fact, feasible.
- (c) Reasonable cost determination. IRC Section 42(m) requires that the housing credit dollar amount allocated to a project not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project. The following standards shall apply:
 - (1) Builder overhead, profit and general requirements. An overall cost limitation of fourteen percent (14%) shall apply to builder overhead, profit and general requirements.
 - (2) Developer fee. A cost limitation on developer fees, as defined, shall be the lesser of:
 - (A) fifteen percent (15%) of unadjusted eligible construction-related basis and five percent (5%) of acquisition basis;
 - (B) fifteen percent (15%) of total development cost; or,
 - (C) \$1,200,000.

For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis. Separate applications for projects within one-fourth (1/4) mile of one another, proposed within a twelve (12) month period, shall be considered as one application for purposes of this subsection, thereby limiting all fees for all projects; although, in cases where a reservation of Credit has already been authorized by the Committee, the terms of the reservation shall remain in force, notwithstanding the location of future projects.

- (3) Syndication expenses. A cost limitation on syndication expenses, excluding bridge loan costs, shall be twenty percent (20%) of the gross syndication proceeds, if the sale of Credit is through a public offering or private Regulation D offering, and ten percent (10%) of the gross syndication proceeds, if the sale is through a private offering. The Executive Director may allow exceptions to the above limitation, in amounts not to exceed twenty-four percent (24%) for public offerings and private Regulation D offerings, and fifteen percent (15%) for private offerings, should the following circumstances be present: smaller than average project size; complex financing structure due to multiple sources; complex land lease or ownership structure; higher than average investor yield requirements, due to higher than average investor risk; and, little or no anticipated project cash allowing lower-than-market investor returns.
- (4) Net syndication proceeds. The Committee shall evaluate the net syndication proceeds to ensure that project sources do not exceed uses and that the sale of Credit generates proceeds equivalent to amounts paid in comparable syndication raises. The Committee shall look at recent transactions for typical projects and current market trends when making this determination, and in no case shall consider the tax credit factor to be less than .50.
- (5) Threshold Basis Limits. The Committee shall limit the unadjusted eligible basis amount, used for calculating the maximum amount of Credit, to amounts published in its Application Supplement in effect at the time of application, in accordance with the definition in Section 10302.

Exceptions to limits. For qualifying projects, up to an additional fifteen percent (15%) of the Threshold Basis Limit shall be allowed to be added to the unadjusted eligible basis to account for extraordinary features that significantly add to project costs. Projects with any one of the following features are eligible for the increase:

- (A) buildings with more than three stories;
 - (B) parking structures beneath residential units (no individual garages);
 - (C) facilities for special needs tenants;
 - (D) linkage with mass-transit;
 - (E) child care facilities with programs;
 - (F) fifty percent (50%) or more of units are comprised of three-bedroom or larger units;
 - (G) significant seismic upgrading of an existing structure; and
 - (H) significant toxic or other environmental mitigation.
- (6) Acquisition costs. Applications including acquisition and rehabilitation costs for existing improvements shall be underwritten using the lesser amount of the purchase price or appraised value of the subject property and its existing improvements.
 - (7) Reserve accounts. All unexpended funds in project reserve accounts shall remain with the project to be used for the benefit of the property and/or its residents, except for amounts designated to be used to pay deferred developer fees, which may be released when available. The Committee shall allow operating reserve amounts in excess of industry norms to be considered "reasonable costs," for purposes of this subsection, only for applications receiving a reservation of Credit from the Nonprofit set-aside homeless assistance apportionment, as described in Section 10315(a)(2).

- (8) Applicant resources. If the applicant intends to finance part or all of the project from its own resources (other than deferred fees), the applicant shall be required to prove, to the Committee's satisfaction, that such resources are available and committed solely for this purpose, including an audited certification from an accountant that applicant has sufficient unencumbered funds to successfully accomplish the financing.
- (d) Determination of eligible and qualified basis. Eligible and qualified basis shall be as defined by the IRC and these regulations. The Committee shall provide forms to assist applicants in determining basis. The Committee shall rely on certification from an independent, qualified Certified Public Accountant for determination of basis; however, the Committee retains the right to disallow any basis it determines ineligible or inappropriate.
 - (1) High Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations.
 - (2) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. Tax-exempt bond projects shall not be subject to this limitation.
- (e) Determination of Credit amounts. The applicant shall determine, and the Committee shall verify, the maximum allowable Credit and the minimum Credit necessary for financial feasibility, subject to all conditions of this Section. For purposes of determining the reservation amount of Credit, the project qualified basis shall be multiplied by an proxy applicable credit percentage of 8.65% to determine the annual Credit amount for the 70% present value credit and the annual amount of the first three years of the state Credit, and 3.71% for the 30% present value credit.
- (f) Determination of feasibility. To be considered feasible, a proposed project shall exhibit positive cash flow after debt service for a 15-year minimum term. "Cash flow after debt service" is gross income minus vacancy and collection loss, operating expenses, property taxes, replacement reserves and debt service. For applications that qualify for a reservation of Credit from the Nonprofit set-aside homeless assistance apportionment, as described in subsection 10315(a)(2), operating reserves may be added to gross income for purposes of determining "cash flow after debt service."
- (g) Underwriting criteria. The following underwriting criteria shall be employed by the Committee in a proforma analysis of proposed project cash flow to determine the minimum Credit necessary for financial feasibility and the maximum allowable Credit:
 - (1) Minimum operating expenses shall be the greater of amounts derived from the comparable operating expense budget required by Section 10322(i)(19), or the following operating expense minimum pertaining to the proposed project:

	SRO/SPN	FAMILY	SENIOR
<u>High Density Projects</u>			
50 or Less Units	\$3,100	\$3,000	\$2,900
51 to 100 Units	\$3,100	\$2,800	\$2,700
More Than 100 Units	\$3,000	\$2,600	\$2,500
<u>Other Projects</u>			
50 or Less Units	\$3,000	\$2,600	\$2,500
51 to 100 Units	\$3,000	\$2,400	\$2,300
More Than 100 Units	\$2,900	\$2,200	\$2,100
<u>Rural Projects</u>			
50 or Less Units	\$3,000	\$2,100	\$1,900
51 to 100 Units	\$3,000	\$2,000	\$1,800
More Than 100 Units	\$2,900	\$1,900	\$1,700

- (A) High density projects. For purposes of this subsection, “high density projects” shall be those:
 - (i) located in census tracts wherein fifteen (15) or more persons per acre reside, as determined by the most recent U.S. Census; or,
 - (ii) projects designed primarily for families that propose twenty-five (25) or more units per acre, projects designed exclusively for seniors that propose thirty-five (35) or more units per acre, and projects designed primarily for special needs or other populations that propose thirty (30) or more units per acre.
- (B) Rural projects. For purposes of this subsection, “rural projects” shall be projects located in rural areas as defined in H & S Code Section 50199.21.
- (2) Replacement reserve minimums shall be the higher of two hundred dollars (\$200) per unit per year, or an annual amount of six-tenths percent (0.6%) of:
 - (A) hard construction cost (not including the costs of subterranean parking or above-grade parking structures), for new construction applications; or
 - (B) the estimated replacement cost of the hard construction cost (not including subterranean parking or above-grade parking structures), as determined by the appraisal required by Section 10322, for rehabilitation applications.
- (3) Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (not including taxes and replacement reserves), and a two percent (2%) increase in property taxes.
- (4) Property tax expense minimums shall be one percent (1%) of total replacement cost, unless:
 - (A) the verified tax rate is higher or lower; or,
 - (B) the proposed sponsorship of the applicant includes an identified 501(c)(3) corporate general partner with, or pursuing, a property tax exemption.
- (5) Vacancy and collection loss minimums shall be five percent (5%) for family, seniors, at-risk and non-targeted proposals, and ten percent (10%) for special needs and SRO proposals.

- (6) Loan terms, including interest rate, length of term, and debt service coverage, shall be evidenced as achievable and supported in the application, or applicant shall be subject to the prevailing loan terms of a lender selected by the Committee.
- (7) Variable interest rate permanent loans shall be considered at the ceiling interest rate.
- (8) "Cash flow after debt service," shall be limited to the higher of twenty-five percent (25%) of the anticipated annual debt service payment or eight percent (8%) of gross income, during any one of the first three years of project operation, subject to reduction in Credit amounts commensurate with said limit.
- (9) The income from the residential portion of a project shall not be used to support any negative cash flow of a commercial portion. Alternatively, the commercial income shall not support the residential portion.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10328. Conditions on Credit Reservations

- (a) General. All reservations of Credit shall be conditioned upon:
 - (1) timely project completion;
 - (2) receipt of amounts of Credit no greater than necessary for financial feasibility and viability as a qualified low-income housing project throughout the extended use period;
 - (3) average income targets as proposed in the application; and,
 - (4) if Credit Utilization competition applied for, receipt of amounts of Credit no greater than amounts derived from using the requested unadjusted eligible basis proposed in the application.
- (b) Preliminary reservations. Preliminary reservations of Credit shall be subject to conditions as described in this subsection and applicable statutes. Reservations of Credit shall be conditioned upon the Committee's receipt of the performance deposit described in Section 10335 and an executed reservation letter bearing the applicant's signature accepting the reservation within twenty (20) calendar days of the Committee's notice to the applicant of the preliminary reservation. However, should the 20-day period for returning the executed reservation letter continue past December 15 of any year, an applicant may be required to execute and return the reservation letter in less than twenty (20) days in order that the reservation be effective. Failure to comply with any shortened period would invalidate the reservation offer and permit the Committee to offer a reservation to the next eligible project.
 - (1) 270-day requirement. Not later than two-hundred seventy (270) days of issuance of a preliminary reservation, the applicant shall submit the following documentation regarding the proposed project:
 - (A) evidence that preliminary working drawings (sufficient for contractor bid and local plan check) have been completed;
 - (B) evidence that all funds necessary to complete construction have been committed;

- (C) evidence that all discretionary (subject to public comment) local approvals have been obtained; and,
- (D) an up-to-date construction schedule with third-party verification from the architect that the construction schedule is reasonable.

Failure to provide the documentation shall result in rescission of the credit reservation and cancellation of a carryover allocation. The Executive Director may waive one or more of the above documentation requirements if not applicable to the proposed project.

- (2) Loan closing notification. Within seven (7) days following the close of the construction loan(s), the applicant shall notify the Committee of the closing.
- (3) Loan closing documentation. Within thirty (30) days following the start of construction, the applicant shall provide the Committee with the following documentation for the proposed project:
 - (A) the company name and contact person, address, telephone number, and fax number of the:
 - (i) general contractor, and
 - (ii) syndication firm or investor;
 - (B) an executed construction contract;
 - (C) a recorded deed of trust for the construction loan;
 - (D) a current title report (dated no later than 30 days before the application deadline);
 - (E) binding commitments for permanent financing;
 - (F) binding commitments for any other financing required to complete project construction;
 - (G) a construction lender trade payment breakdown of approved construction costs;
 - (H) evidence that all discretionary (subject to public comment) local land use approvals have been obtained;
 - (I) an executed partnership agreement between the applicant and investor verifying the expected equity raise, pay-in schedule and costs of syndication; and,
 - (J) a completed Final Reservation Status Report form, the form provided by the Committee.
- (c) Final Reservations. Upon receipt of loan closing documents, the Committee shall conduct a financial feasibility and cost reasonableness analysis for the proposed project, and determine if all conditions of the preliminary reservation have been satisfied. Substantive changes to the approved application, in particular, changes to the financing plan or costs, need to be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. If all conditions have been satisfied, a final reservation of Credit shall be made in an amount not to exceed the maximum dollar amount of Credit stated in the Preliminary Reservation. The Committee shall detail in the final reservation letter additional submission requirements necessary to receive tax forms for claiming Credit.
- (d) Carryover Allocations. Applicants receiving a Credit reservation shall satisfy either the Placed-in-service requirements (pursuant to subsection 10322(j)(2) or carryover allocation requirements in the year the reservation is made, pursuant to IRC Section 42(h)(1)(E) and these regulations, as detailed below.

- (1) Additional documentation and analysis. The Committee may request, and the holder of a Credit reservation shall provide, additional documentation required for processing a carryover allocation. Following submission of carryover allocation documents, the Committee shall conduct a financial feasibility and cost reasonableness analysis. Substantive changes to the approved application, in particular, changes to the financing plan or costs, need to be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. Once the Committee completes its analysis, and reaches a satisfactory conclusion, a carryover allocation of Credit shall be made in an amount not to exceed the maximum dollar amount of Credit stated in the Preliminary Reservation.
- (2) Incurred costs and land acquisition. In addition to the requirements of the IRC, to receive a carryover allocation an applicant shall:
 - (A) incur more than ten percent (10%) of the total basis anticipated upon completion;
 - (B) acquire, or obtain a leasehold on, the subject property; and,
 - (C) provide evidence that applicant maintained site control from the time of application.
- (3) Certification. The Committee shall require a certification from an applicant, which has received a reservation, that the facts in the application continue to be true before an allocation is made.
- (4) Extension rule. All requirements for a carryover allocation shall be met by the date specified in the reservation letter, with the following exception: the Executive Director shall automatically grant a one-time extension until December 1st of the year of the reservation, so long as the allocation fee is paid by cashier's check by the date specified in the reservation letter. The Committee may grant one extension, to December 15, in cases where the applicant has requested said extension by December 1 of the year of the reservation. For purposes of the above paragraph, should the dates cited fall on a non-business day, the date shall instead be the preceding business day.
- (e) Placed-in-service. Upon completion of construction of the proposed project, the applicant shall submit documentation required by the conditions of the final reservation and carryover allocation, if applicable, including an executed regulatory agreement, provided by the Committee, and the compliance monitoring fee required by Section 10335. The Committee shall determine if all conditions of the final reservation and carryover allocation have been satisfied. Substantive changes to the approved application, in particular, changes to the financing plan or costs, need to be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. If all conditions have been satisfied, tax forms shall be issued reflecting an amount of Credit not to exceed the maximum amount of Credit stated in the Preliminary Reservation.
- (f) Additional Conditions to Reservations and Allocations of Credit. Additional conditions, including cancellation, disqualification and other sanctions may be imposed by the Committee in furtherance of the purposes of the Credit programs.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10330. Appeals

- (a) Availability. An applicant may file an appeal of a Committee staff evaluation, limited to: determination of the application score, pursuant to subsection 10325(c); qualification for “additional threshold requirements,” pursuant to subsection 10325(g); and, determination of the Credit amount, pursuant to Section 10327. No applicant may appeal the Committee staff evaluation of another applicant’s application.
- (b) Timing. The appeal shall be submitted in writing and be received by the Committee not later than seven (7) calendar days following the transmittal date of the Committee staff report. The appeal shall identify specifically, based upon existing documentation, the applicant's grounds for the appeal.
- (c) Review. The appeal review shall be based upon the existing documentation submitted by the applicant when the application was filed. The Committee staff shall prepare a brief statement of findings as a result of the appeal review. The statement will either uphold the original Committee staff report or will explain the modification recommended. The statement will be made available to the applicant at or before the Committee meeting.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10335. Fees and Performance Deposit

- (a) Application fee. Every applicant, including tax-exempt bond project applicants, shall be required to pay an application filing fee of \$2,000. This fee shall be paid in a cashier's check payable to the Committee and shall be submitted with the application. This fee is not refundable.
 - (1) Local Reviewing Agency. One-half of the application filing fee shall be provided to an official Local Reviewing Agency (LRA) which completes a project evaluation for the Committee. The Local Reviewing Agency may waive its portion of the application filing fee. Such waiver shall be evidenced by written confirmation from the LRA, either included with the application, or provided to the Committee no later than the Committee’s receipt of the LRA evaluation. An application that includes such written confirmation from an LRA may remit an application filing fee of \$1,000. One half of the application filing fee shall be waived if the application is a re-submission and meets the criteria for submitting one copy of the application as set forth below:
 - (2) If an application does not receive a reservation during a reservation cycle, the applicant may resubmit the application, with no changes, during the same calendar year and not be required to pay an additional application fee, unless the next reservation cycle falls in the subsequent calendar year, and, therefore, a new application filing fee shall be required. If the applicant amends the application in any way and submits it in the next reservation cycle, the applicant shall be required to submit a new application filing fee.

- (b) Allocation fee. Every applicant who receives a reservation of Credit, except tax-exempt bond project applicants, shall be required to pay an allocation fee equal to four percent (4%) of the dollar amount of the first year's federal credit amount reserved. Reservations of Credit shall be conditioned upon the Committee's receipt of the required fee paid by cashier's check made payable to the Committee prior to execution of a carryover allocation or issuance of tax forms, whichever comes first. This fee is not refundable.
- (c) Reservation fee. Tax-exempt bond project applicants receiving Credit reservations shall be required to pay a reservation fee equal to one percent (1%) of the annual federal credit amount reserved. Reservations of Credit shall be conditioned upon the Committee's receipt of the required fee within twenty (20) days of issuance of a tax-exempt bond reservation or prior to the issuance of tax forms, whichever is first.
- (d) Performance deposit. Each applicant receiving a preliminary reservation of federal, or federal and state, Credit shall submit a performance deposit equal to four percent (4%) of the first year's federal Credit amount reserved. Notwithstanding the other provisions of this subsection, an applicant requesting federal Credit not subject to the federal housing credit ceiling and requesting state Credit, shall be required to submit a performance deposit in an amount equal to four percent (4%) of the first year's state Credit amount reserved for the project. Notwithstanding the other provisions of this Section, an applicant requesting only federal Credit not subject to the federal housing credit ceiling, shall not be required to submit a performance deposit.
 - (1) Timing and form of payment. The performance deposit shall be submitted in a cashier's check payable to the Committee within twenty (20) calendar days of the Committee's notice to the applicant of a preliminary reservation.
 - (2) Returned Credit. If Credit are returned after a reservation has been accepted, the performance deposit is not refundable, with the following exceptions. Projects unable to proceed due to a natural disaster, a law suit, or similar extraordinary circumstance that prohibits project development may be eligible for a refund. Requests to refund a deposit shall be submitted in writing for Committee consideration. Amounts not refunded are forfeited to the Committee. All forfeited funds shall be deposited in the occupancy compliance monitoring account to be used to help cover the costs of performing the responsibilities described in Section 10337.
 - (3) Refund or forfeiture. To receive a full refund of the performance deposit, the applicant shall do all of the following: place the project in service under the time limits permitted by law; qualify the project as a low-income housing project as described in Section 42; meet all the conditions under which the reservation of Credit was made; certify to the Committee that the Credit allocated will be claimed; and, execute a regulatory agreement for the project.

If the Committee cancels a Credit because of misrepresentation by the applicant either before or after an allocation is made, the performance deposit is not refundable. If the project is completed, but does not become a qualified low-income housing project, the performance deposit is not refundable.

- (4) Appeals. An applicant may appeal the forfeiture of a performance deposit, by submitting in writing, a statement as to why the deposit should be refunded. The appeal shall be received by the Committee not later than seven (7) calendar days after the date of mailing by the Committee of the action from which the appeal is to be taken. The Executive Director shall review the appeal, make a recommendation to the Committee, and submit the appeal to the Committee for a decision.
- (e) Compliance monitoring fee. The Committee shall charge a \$410 per unit fee, up to a maximum \$26,650 per project, to cover the costs associated with compliance monitoring throughout the extended-use period. Generally, payment of the fee shall be made prior to the issuance of federal and/or state tax forms. Assessment of a lesser fee, and any alternative timing for payment of the fee, may be approved in the sole discretion of the Executive Director and shall only be considered where convincing proof of financial hardship to the owner is provided. Nothing in this subsection shall preclude the Committee from charging an additional fee to cover the costs of any compliance monitoring required, but an additional fee shall not be required prior to the end of the initial 15 year compliance period.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.

Section 10337. Compliance

- (a) Regulatory Contracts. All recipients of Credit, whether federal only, or both federal and state, are required to execute a regulatory contract, as a condition to the Committee's making an allocation, which will be recorded against the property for which the Credit are allocated, and, if applicable, will reflect all scoring criteria proposed by the applicant in the competition for federal and/or state housing credit ceiling.
- (b) Responsibility of owner. All compliance requirements monitored by the Committee shall be the responsibility of the project owner. Any failure by the owner to respond to compliance reports and certification requirements will be considered an act of noncompliance and shall be reported to the IRS if reasonable attempts by the Committee to obtain the information are unsuccessful.
- (c) Compliance monitoring procedure. As required by Section 42(m), allocating agencies are to follow a compliance monitoring procedure to monitor all Credit projects for compliance with provisions of Section 42. The procedure does not address documents, forms and other records that may be required of the project owner by the IRS. Compliance with Section 42 is the sole responsibility of the owner of the building for which the Credit is allowable. The Committee's obligation to monitor projects for compliance with the requirements of Section 42 does not place liability on the Committee for any owner's noncompliance, nor does it relieve the owner of its responsibility to comply with Section 42. The Committee's compliance monitoring procedure is based upon final regulations issued by the IRS effective June 30, 1993, as follows:

- (1) Record keeping. The owner of a Credit project is required to retain records for each qualified low income building in the project for each year in the compliance period showing: the total number of residential rental units in the building (including the number of bedrooms, and unit size in square feet); the percentage of residential rental units in the building that are low-income units; the rent charged for each unit (including utility allowance); the number of household members in each unit; notation of any vacant units; move-in dates for all units; tenant's (i.e., household) income; documentation to support each household's income certification; the eligible basis and qualified basis of the building at the end of the first year of the credit period; and, the character and use of any nonresidential portion of the building included in the building's eligible basis.
- (2) Record Retention. For each qualified low-income building in the project, and for each year of the compliance period, owners and the Committee are required to retain records of the information described above in "record keeping requirements."
 - (A) Owners shall retain documents according to the following schedule:
 - (i) for at least six years following the due date (with extensions) for filing the federal income tax return for that year (for each year except the first year of the credit period); and,
 - (ii) for the first year of the credit period, at least six years following the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.
 - (B) The Committee shall retain records of noncompliance, or failure to certify, for at least six years beyond the Committee's filing of the respective IRS noncompliance Form 8823. Should the Committee require submission of copies of tenant certifications and records, it shall retain them for three years from the end of the calendar year it receives them. Should it instead review tenant files at the management office of the subject project, it shall retain its review notes and any other pertinent information for the same three-year period. the Committee shall retain all other project documentation for the same three-year period.
- (3) Certification requirements. Under penalty of perjury, a Credit project owner is required to annually, during each year of the compliance period, meet the certification requirements of U.S. Treasury Regulations 26 CFR 1.42-5(c), in addition to the following requirements:
 - (A) the project met all terms and conditions recorded in its Regulatory Agreement, if applicable;
 - (B) the applicable fraction (as defined in IRC Section 42(c)(1)(B)) met all requirements of the Credit allocation as specified on IRS Form(s) 8609 (Low-Income Housing Credit Allocation Certification.);
 - (C) no change in ownership of the project has occurred during the reporting period;
 - (D) the project has not been notified by the IRS that it is no longer a "qualified low-income housing project" within the meaning of Section 42 of the IRC;
 - (E) no additional tax-exempt bond funds or other Federal grants or loans with interest rates below the applicable federal rate have been used in the Project since it was placed in service; and,
 - (F) report the number of units that were occupied by Credit eligible households during the reporting period.

- (4) Status report, file and site inspection. The Committee, or its designee, shall annually perform tenant file inspections on a minimum of twenty percent (20%) of all occupied projects, and shall review and inspect the annual income certification and supporting documentation, rent records, utility allowance documentation and any other information, of at least twenty percent (20%) of the units in said projects. Each year the Committee shall select projects for which site inspections will be conducted. The projects shall be selected using guidelines established by the Executive Director for such purpose. Advance notice shall not be given of the Committee's selection process, or of which tenant records will be inspected at selected projects; however, an owner shall be given reasonable notice prior to a project inspection.
- (A) A Notice of Intent to Conduct Compliance Inspection and a Project Status Report (PSR) form will be delivered to the project owner within a reasonable period before an inspection is scheduled to occur. The completed PSR form shall be submitted to the Committee by the owner prior to the compliance inspection. The Committee will review the information submitted on the PSR for compliance with income, rent and other requirements prior to performing the tenant file inspection.
 - (B) In addition, each project undergoing a file inspection shall be subject to a visual inspection of its outward physical appearance. Unit inspections shall not be performed unless deferred maintenance of the project common areas suggests that units may not be fit for occupancy. Owners shall be notified of the inspection results.
 - (C) The Committee shall perform its status report and file inspection procedures on Credit projects even if other governmental agencies also monitor those projects. The Committee's reliance on other review findings may alter the extent of the review, solely at the Committee's discretion and as allowed by IRS regulations. The Committee may rely on reports of site visits prepared by lenders or other governmental agencies, at its sole discretion. The Committee shall, whenever possible, coordinate its procedures with those of other agencies, lenders and investors.
- (5) Notification of noncompliance. The Committee shall notify owners in writing if the owner is required to submit documents/information related to the inspection of tenant files. If the Committee does not receive the information requested, is not permitted or otherwise is unable to inspect and review project files, or discovers noncompliance with Section 42 as a result of its review, the owner shall be notified in writing before any notice is sent to the IRS.
- (6) Correction period. It is the intention of the Committee that owners be given every reasonable opportunity to correct any noncompliance. Owners shall be allowed an opportunity to supply missing tenant file documents or to correct other noncompliance within a correction period no longer than ninety (90) days from the date of written notice by the Committee to the owner. With good cause, the Committee may grant up to a six-month extension of the correction period upon receipt of a written justification from the owner.
- (7) IRS and FTB notification. All instances of noncompliance, whether corrected or not, shall be reported by the Committee to the IRS. This shall be done within forty-five (45) days following the termination of a correction period allowed by the Committee, pertaining to IRS Form 8823.
- (d) Change in ownership. It is the project owner's responsibility to inform the Committee of any change in the ownership of the project and the owner's mailing address.

- (e) First year's 8609. Project owners shall be required to submit a copy of the executed first year's filing of IRS Form 8609 (Low-Income Housing Credit Allocation Certification) for inclusion in the Committee's permanent project records.

Authority: Section 50199.17, Health & Safety Code.

Reference: Sections 12206, 17058, and 23610.5, Revenue & Taxation Code; Sections 50199.4--50199.22, Health & Safety Code.